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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/721,111	11/25/2003	Paul G. Ritchie	END-5122	6113
27777	7590	09/07/2007	EXAMINER	
PHILIP S. JOHNSON			SHAY, DAVID M	
JOHNSON & JOHNSON				
ONE JOHNSON & JOHNSON PLAZA			ART UNIT	PAPER NUMBER
NEW BRUNSWICK, NJ 08933-7003			3735	
			MAIL DATE	DELIVERY MODE
			09/07/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/721,111	RITCHIE ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	david shay	3735

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on July 9, 2007.
- 2a) This action is FINAL.                  2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-9,12,21 and 22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-9,12,21 and 22 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_
- 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

Applicant argues that the applied combination is improper because the reference to Takayama et al is “irrelevant” to the instant invention. The examiner must respectfully disagree. While it is noted that the instant claims refer to the “energy self-absorption” of the fiber, it is respectfully noted that the energy being absorbed in the instant device is light. It is further noted that light energy so absorbed is not transmitted, but is lost, and as such represents a transmission loss of the fiber. Thus, just as the transmission losses of the instant device will serve to heat up the fiber, so will the losses of Takayama et al. As such, the disclosure of compensation for the transmission losses in Takayama et al to provide an accurate temperature reading are highly pertinent to the instant invention. This is also separate and apart from the use of other information and calculations to compensate for the consumption of the fiber, which teachings would not be employed by one of ordinary skill in the art, since they are clearly not pertinent to a device where the fiber is not consumed, as in the devices of Ritchie et al and Yates et al. Similarly, the fact that the instant device is used to deliver energy does nothing to detract from the use of the fiber absorption characteristics, as these would become, if anything even more relevant, in the case of large amounts of energy being transmitted therethrough. Thus applicant’s arguments are not convincing.

Claims 1-9, 12, and 22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1 and 22 are indefinite as the scope thereof is unclear – the preamble of the claim recited an energy delivery device, however, the body of the claim positively recites the medical treatment system. For the purposes of examination, these claims will be treated as a claim to the

system as a whole, also for the purposes of examination, the recitation in claim 1 that the measured temperature is provided to the medical treatment system will be read as a signal representing the measured temperature is provided to the medical treatment system.

Claims 1-9, 12, 21, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ritchie et al in combination with Yates et al and Takayama et al. Ritchie et al teach the use of memory devices to store fiber characteristics. Yates et al teach the desirability of employing fluorescent temperature sensors that have greater stability and repeatability between laser systems. Takayama et al teach that the absorption properties of the optical fibers alter the output of temperature measuring devices employing the fibers. It would have been obvious to the artisan or ordinary skill to employ the temperature sensor of Yates in the device of Ritchie et al, since these have greater stability and repeatability between laser systems, as taught by Yates et al, and to include data related to the absorption characteristics of the fiber, since this would be part of the calibration process, as taught by Takayama et al, thus producing a device and method such as claimed.

Applicant's arguments filed July 9, 2007 have been fully considered but they are not persuasive. The arguments are not persuasive for the reasons set forth above.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to david shay whose telephone number is (571) 272-4773. The examiner can normally be reached on Tuesday through Friday from 6:30 a.m. to 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor, II, can be reached on Monday, Tuesday, Wednesday, Thursday, and Friday. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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